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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,161	12/21/2001	Clayton L. Robinson	ZI154/02118	8175

22884 7590 09/23/2003

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LOUISVILLE, KY 40202

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/026,161

Applicant(s)

ROBINSON ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Drawings*

1. The drawings were received on July 7, 2003. These drawings are approved by the examiner.

### *Specification*

2. The abstract of the disclosure is objected to because it contains the objectionable phrase: "The present development is for". **Correction is required.** See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-8, and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zumbuhl (US 5,992,661) in view of Wetten et al. (US 6,235,822).

Zumbuhl teaches the claimed closure except is silent regarding the action of the sealing gasket 19.

Wetten teaches it is known to provide a closure liner for hot-filing a container, that the liner material is inherently known to compress and recover during at high temperature and/or high pressure because of its thermoplastic elastomeric material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a liner material capable of compressing and recovering as a result of high temperature and/or high pressure in the associated container, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so allows for complete sealing engagement between the closure and the container until desired removal of the closure from the container.

Regarding claim 2, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the liner material with a melting point greater than 265° F and a shore A

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hardness of 70, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claim 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a tamper-evident band having a plurality of resilient fingers since the examiner takes Official Notice of the equivalence of a continuous bead and a plurality of resilient fingers for their use in the closure art and the selection of any of these known equivalents to secure a tamper-evident band to a container collar would be within the level of ordinary skill in the art.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Carr et al. (US 4,625,875).

Zumbuhl as modified teaches the claimed closure except for a sealing layer between the liner and the interior cap surface.

Carr teaches it is known to provide a sealing layer between the liner and the interior cap surface.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a sealing layer between the liner and the interior cap surface. Doing so ensures contact between the liner and the interior cap surface particularly when the liner is preformed and applied to the cap in a separate step.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Kelly (US 6,202,871).

Zumbuhl as modified teaches the claimed closure except for at least one slit extending from the top along the skirt.

Kelly teaches it is known to provide a closure skirt with at least one slit.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of at least one slit along the cap skirt. Doing so allows venting of the container to occur during initial removal of the closure.

7. Claims 10-18,20, and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr in view of Wetten.

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Carr teaches a closure with a tamper-evident band **16** having a continuous bead formed under a groove **42**. The screw threads are seen in figures 2-4 to having an upper edge angle less than about 45°. Carr does not teach the liner is of a material for retort processing.

Wetten teaches it is known to provide a closure liner for hot-filling a container, that the liner material is inherently known to compress and recover during at high temperature and/or high pressure because of its thermoplastic elastomeric material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a liner material capable of compressing and recovering as a result of high temperature and/or high pressure in the associated container. Doing so allows for complete sealing engagement between the closure and the container until desired removal of the closure from the container.

8. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim10 above, and further in view of Zumbuhl.

Carr as modified teaches the claimed closure except for resilient fingers on the band.

Zumbuhl teaches a tamper-evident band having a plurality of resilient fingers thereon.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a plurality of resilient fingers to the tamper-evident band of Carr. Doing so provides more flexure as the closure is pressed upon the container and the ban slips over the collar.

9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 11 above, and further in view of Kelly.

Carr as modified teaches the claimed closure except for at least one slit extending from the top along the skirt.

Kelly teaches it is known to provide a closure skirt with at least one slit.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of at least one slit along the cap skirt. Doing so allows venting of the container to occur during initial removal of the closure.

***Response to Arguments***

10. Applicant's arguments filed July 7, 2003 have been fully considered but they are not persuasive.

Regarding applicant's remarks at page 4, paragraph 2, regarding Zumbuhl, the reference may state "the closure therein only has an optional liner and seal combination, but that does not prohibit the structure from applying a positive pressure upon a seal. Additionally, it is known in the art that a seal applies a positive pressure to a seal affixed to the mouth of an associated container. Moreover, the preamble of the claim is used to set forth the environment of the invention, but does not structurally limit the claimed invention. Applicant is relying upon the condition set forth in the preamble in an attempt to establish patentability of the claimed structure over the prior art.

Regarding applicant's remarks directed to Wetten, the known material used to make a gasket is clearly taught therein. The use of the gasket to seal only a closure to a container is not at issue, but rather the material usable to form a gasket.

Regarding applicant's remarks regarding the combination of Zumbuhl and Wetten, for reasons set forth above, the prior art are combinable and teach the claimed invention.

In response to applicant's argument that the references, i.e., Carr and Wetten, fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the sterilized container) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Wherein applicant's remarks to the rejections of the base claims are not persuasive, no further remarks are made herein regarding the dependent claims.

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed,

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and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

13. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-\_\_\_\_\_ on the date shown below.

Typed or printed name of person signing this certificate

\_\_\_\_\_  
Signature

Date \_\_\_\_\_


14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
September 20, 2003

  
Robin A. Hylton  
Primary Examiner  
GAU 3727